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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
At Charleston

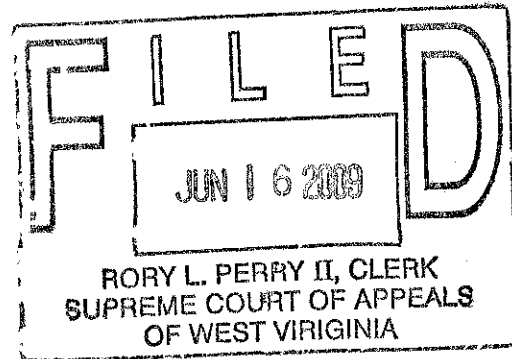
STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

*Appellant,*

v.

RICHARD BLAKE, JR. AND JOHN T. PARKER,

*Appellees.*



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*Appeal from the Circuit Court of  
Marshall County, West Virginia  
Case No. 06-C-72M*

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**APPELLANT'S REPLY BRIEF**

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**COMES NOW** the Appellant, State Farm Mutual Automobile Insurance Company (hereinafter "State Farm"), by and through its counsel, E. Kay Fuller, Michael M. Stevens, and Martin & Seibert, L.C., and pursuant to Rule 10 of the West Virginia Rules of Appellate Procedure presents its Reply Brief respectfully requesting the June 30, 2008, Order of the Circuit Court of Marshall County be reversed.

**I. NATURE OF PROCEEDINGS AND RULINGS BELOW**

The Appellant relies upon its statement of the Nature of Proceedings and Rulings Below as set forth in its Appellant's Brief.

**II. STATEMENT OF FACTS**

The facts underlying the matter before this Court are not in dispute. On or about March 31, 2006, Appellee Richard Blake borrowed a trailer from Appellee John Parker and attached the same to his pickup truck. Mr. Blake then negligently operated his truck which resulted in the destruction of his truck and the attached trailer.

Mr. Blake had a policy of insurance with State Farm which did not carry comprehensive or collision coverage to protect his truck or property attached to his truck that he was transporting. The policy carried liability coverage to protect damage he caused to others in the amount of \$25,000.00 per accident.

W.Va. Code §17D-4-12(e) states as follows:

e) Such motor vehicle liability policy need not insure any liability under any workers' compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair

of any such vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured. (Emphasis added.)

The policy insuring Mr. Blake contained a similar limitation to liability coverage:

There is no liability coverage "...FOR ANY DAMAGES TO PROPERTY OWNED BY, RENTED TO, IN THE CHARGE OF, OR TRANSPORTED BY AN INSURED..."

(Policy pp. 7-8)<sup>1</sup>

Mr. Blake submitted a liability claim for damage to Mr. Parker's trailer. That claim was denied, based on the policy provision noted above, in that the attached trailer was "in the charge of" or "transported by" Mr. Blake. This decision was predicated upon a determination that, once attached, the trailer effectively became a part of the vehicle and was therefore subject to the same coverage available to the vehicle, itself.

In that the policy's liability coverage was not intended, nor was it required, to compensate for damages to a vehicle operated by the insured nor any instrumentalities attached thereto, and that Mr. Blake declined to purchase the coverage which would have provided compensation for the loss, there was no coverage available for damage to the trailer.

Litigation ensued and the Circuit Court of Marshall County granted Summary Judgment to the Appellees. Therein, the Circuit Court determined, *inter alia*, that State Farm's policy language was inconsistent with the minimum financial responsibility requirements set forth in W.Va. Code §17D-4-12. The

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<sup>1</sup> Relevant pages of the State Farm policy are contained within the Record as exhibits to State Farm's Memorandum of Law dated January 25, 2008.

Circuit Court also held that State Farm's policy language was ambiguous and internally inconsistent with respect to the borrowed trailer and, in so doing, found that Mr. Blake had a reasonable expectation of coverage under the policy for the loss in question. Finally, the Circuit Court concluded that State Farm owed a duty of defense to Mr. Blake in the Magistrate Court action filed by Mr. Parker to recover for the damage to the trailer.

### **III. ASSIGNMENT OF ERROR**

1. The Circuit Court erred in refusing to apply the plain language of W.Va. Code §17D-4-12(e), which specifies an insurer is not required to extend liability coverage to property "transported by" or "in the charge of" the insured.

2. The Circuit Court erred in finding State Farm's policy language, which likewise limits the extension of property damage liability coverage in accordance with W.Va. Code §17D-4-12(e), was ambiguous and internally inconsistent with other policy provisions.

3. The Circuit Court erred in finding the insured had a "reasonable expectation" of property damage liability coverage for the loss in question.

4. The Circuit Court erred in finding State Farm had a duty to defend the suit brought by Mr. Parker because the underlying claim for damage to the trailer was foreign to the risk insured.

### **IV. POINTS AND AUTHORITIES**

The Circuit Court's Order effectively created an obligation to extend liability coverage that is contrary to policy language and the governing statute.

In so doing, it failed to acknowledge the fact that there are certain situations where liability coverage simply does not apply.

Indeed, W.Va. Code §17D-4-12(e) enumerates certain exceptions to the extension of liability coverage.

(e) Such motor vehicle liability policy need not insure any liability under any workers' compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured. (Emphasis added).

As noted above, among these exceptions are property that is "in charge of or transported by the insured." Notwithstanding the Appellees' attempt to characterize this provision as somehow being limited to "employment" issues (Response Brief at 23), the statute reflects no such limitation. This alone warrants reversal of the Circuit Court's Order, which found State Farm's policy language inconsistent with the West Virginia Financial Responsibility Act which clearly disregarded that the policy language is equivalent to the relevant portion of W.Va. Code §17D-4-12(e).

The Appellees also contend that State Farm's policy language is internally inconsistent and is therefore ambiguous as a matter of law. It has long been recognized in this State that ambiguities in a contract of insurance are to be construed against the drafter. *National Mut. Ins. Co. v. McMahon & Sons, Inc.*, 177 W.Va. 734, 356 S.E.2d 488 (1987). However, it is equally significant that mere disagreements regarding the scope and effect of a policy provision do not

result in an ambiguity. *Pilling v. Nationwide Mut. Fire Ins. Co.*, 201 W.Va. 757, 500 S.E.2d 870 (1997).

In the present case, State Farm's policy contains a specific provision under the Liability Coverage section entitled "Trailer Coverage," which then sets forth certain instances in which damage caused by an attached trailer will be compensable under liability coverage. This provision must be read in the appropriate context. The liability coverage section encompasses those situations where State Farm agrees to indemnify the insured against damage to property other than the insured vehicle and it is not inconsistent with the exception to coverage on which State Farm relied. Rather, the borrowed trailer, even if the property of Mr. Parker, for all relevant purposes became one and the same with the insured's vehicle when it was attached thereto. Hence, there was no liability coverage just as there would be no liability coverage for the damage Mr. Parker caused to his own truck due to his negligent driving.

To find otherwise would extend the reach of liability coverage to an absurd degree and effectively obviate the need to purchase other applicable coverage such as comprehensive and collision. For example, adopting the argument posited by the Appellees could ultimately lead to the extension of liability coverage to compensate for damage to any borrowed vehicle – merely because the vehicle, itself, was the property of a third party.

This is clearly beyond the scope of liability coverage as contemplated both by the policy and by our Legislature. The attachment of a trailer to the vehicle does not alter this result. Although liability coverage would be applicable should

the vehicle and/or attached trailer damage another vehicle or property, the trailer, itself, becomes “one and the same” with the towing vehicle and is properly subject to the same coverage limitation applicable to the towing vehicle.

The Appellees also advance the argument that Mr. Blake had a “reasonable expectation” of coverage for loss to the borrowed trailer. Such a contention, however, is misplaced. Absent the existence of an ambiguity, which is not present in the policy language, and no exceptional circumstances as more fully addressed in *Luikart v. Valley Brook Concrete & Supply, Inc.*, 216 W.Va. 748, 613 S.E.2d 896 (2005), no expectation of coverage, reasonable or otherwise, is applicable.

Finally, given that the loss in question was entirely foreign to the risks insured under the policy, pursuant to this Court’s guidance in *State Auto. Mut. Ins. Co. v. Alpha Engineering Services, Inc.*, 208 W.Va. 713, 542 S.E.2d 876 (2000), State Farm had no duty to defend Mr. Blake in the Magistrate Court action arising from this accident. The Circuit Court’s contrary finding was therefore in error.

The Appellees have consistently argued that certain documents filed on behalf of State Farm in *Grimsrud v. Hagel*, 119 P.3d 47 (2005), a Montana case, support the propriety of the Circuit Court’s ruling and direct a commensurate outcome in the present Appeal. Therein, counsel for State Farm stated that the policy’s property damage liability coverage was the proper mechanism for compensating for loss to a borrowed trailer and its contents and that State Farm did, indeed, compensate for the loss to the trailer accordingly. The Appellees contend that State Farm’s position in the

present matter is inconsistent with its position in *Grimsrud* and that its denial of coverage for the loss in question is without merit.

The *Grimsrud* holding, however, actually supports State Farm's argument. The *Grimsrud* Court considered identical policy language excepting coverage for property "transported by" and/or "in the control of" an insured - specifically against the backdrop of Montana's financial responsibility statute - and upheld State Farm's determination that the loss to snowmobiles carried on a trailer being towed by the insured was not compensable under the policy's property damage liability coverage.

Extending *Grimsrud* to the present case, there clearly would be no liability coverage available for damage to property carried on the borrowed trailer. Likewise, there has been no contention that liability coverage was applicable to damage to the insured's vehicle, nor would such coverage be available under even the most lenient policy interpretation.

It would be counter-intuitive to find that the trailer itself was somehow covered under the policy's liability coverage, notwithstanding the fact that the vehicle to which it was attached was not so covered. This is, however, the precise position espoused by the Appellees and endorsed by the Circuit Court in its erroneous grant of summary judgment.

The question of damage to the trailer was not the operative issue before the *Grimsrud* Court. It was only raised in a belated effort to estop State Farm from asserting the very exception from coverage that was ultimately affirmed on appeal. Although counsel for State Farm responded that it had previously paid for damage to the trailer under the policy's liability coverage - any such representation was merely

tangential to the issue presented for judicial resolution and is certainly not binding in the present matter.<sup>2</sup> Secondly, regardless of how the trailer loss discussed in *Grimsrud* was ultimately paid or the representations made with respect to this payment, the fact remains that appropriate coverage had been purchased by the insured.<sup>3</sup> This is in stark contrast to the present case, where it is undisputed that Mr. Blake did cover those very coverages which would have compensated for this loss to his truck and the attached trailer.

## V. CONCLUSION

In sum, the claim advanced by the Appellees was totally foreign to the risk insured by State Farm under the property damage liability provision of its policy. The borrowed trailer was being transported by and was in the control of Mr. Blake and was therefore specifically excepted, by statute and commensurate policy language, from liability coverage.

**WHEREFORE**, the Appellant, State Farm Mutual Automobile Insurance Company, respectfully requests that this Court reverse the June 30, 2008, Order of the Circuit Court of Marshall County.

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<sup>2</sup> Moreover, it is settled law that a representative of an insurer cannot create coverage after a policy is written and the loss occurs. *Spencer v. Travelers Ins. Co.*, 148 W.Va.111, 133 S.E. 2d 735, 741 (1963), citing 7 M.J., Evidence, §138. As a result, any representations made in conjunction with *Grimsrud* regarding the scope of coverage are of no legal effect in the present case.

<sup>3</sup> The Appellees contend that State Farm "misrepresented" the manner in which the trailer payment discussed in the *Grimsrud* case was made. Review of the pleadings filed both before this Court and the Circuit Court, however, reveals no instance where State Farm, as alleged by the Appellees, asserted that the trailer loss was "paid under collision coverage." Rather, State Farm correctly advised this Court, as it did the Circuit Court, of the fact that collision coverage was carried on the policy at issue in *Grimsrud* and that such coverage was applicable to the trailer loss.

Respectfully submitted,

**STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY**

By Counsel

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BY: 

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**CERTIFICATE OF SERVICE**

This is to certify that I, Michael M. Stevens, Counsel for the Appellant, served the foregoing ***Appellant's Reply Brief***, upon the following individual by United States Mail, first class, postage prepaid on this the 15th day of June, **2009:**

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